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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Curtis Brian Williamson

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EXAMINER

JUSKA, CHERYL

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

10/15/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed August 8, 2007, has been entered. Claim 1 has been amended as requested. Claims 15-33 are cancelled. Thus, the pending claims are 1-14.
2. Said amendment is sufficient to overcome the 112, 1st rejection set forth in section 5 of the last Office Action (Non-Final Rejection mailed 05/11/07). Despite this advance the claims do not contain allowable subject matter for the reasons set forth below.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-14 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over US 4,617,208 issued to Cadenhead, Sr.

It is noted that the presently recited process limitations of amended product-by-process claim 1 are not necessarily given patentable weight at this time. It is the examiner's position that

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the final product of Cadenhead is identical or only slightly different than the presently claimed pile fabric prepared by the method presently claimed for the reasons set forth below. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or an obvious variant from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964.

Cadenhead teaches a process for making a cut pile, tufted carpet having non-directional pile (abstract). The process comprises the steps of:

- (a) knitting a thermoplastic yarn into a deknittable fabric,
- (b) heating the fabric to a temperature so that the bends and curves of the yarn generated by its knitted configuration is established in the yarn's memory,
- (c) cooling the fabric,
- (d) deknitting the cooled fabric and rewinding the yarn under enough tension to restraighten it,
- (e) tufting the yarn into a primary backing,
- (f) backcoating the tufted primary backing with an adhesive backcoat, and
- (g) heating the backcoated and tufted carpet to a temperature at which the pile yarn reconforms to the bends and twists of the knitted configuration in its memory.

The pile yarns may be of any cross-sectional shape, but are preferably ribbon shaped, and are preferably made of polypropylene, nylon, or polyester (abstract, col. 1, lines 40-59, and col. 2, lines 21-32).

Since the deknitted yarn is “restrained” prior to tufting, applicant’s recitation to providing a pile portion of “non-textured fibers” is met by Cadenhead’s disclosure.

Additionally, applicant’s recitation of “lateral blooming” is met by Cadenhead’s teaching that the yarn is latently bulked (i.e., the yarn reconfirms to its knitted configuration stored in its memory upon heating to appropriate temperature). Furthermore, note Figure 3 of Cadenhead which shows said bulking or blooming occurs in a lateral fashion, thereby providing coverage between rows of tufts.

Hence, Cadenhead teaches the limitations of claims 1-6 and 11-13 with the exception of the recited “average void area” property. However, it is reasonable to presume that said property is inherent to the invention. Support for said presumption is found in the use of similar materials (i.e., self-bulking yarns capable of bulking upon heat treatment) and in the similar production steps (i.e., tufting latently bulkable yarns into a primary backing and exposing to heat to bulk said yarns) used to produce the carpet. The burden is upon applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 495. In the alternative, the claimed property would obviously have been provided by the process disclosed by Cadenhead. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. Therefore, claims 1-6 and 11-13 are rejected as being anticipated by or obvious over the Cadenhead reference.

Claims 7-10 and 14 are also rejected under 102 or 103 since said claims are drawn to process limitations which are not given patentable weight at this time. Said process limitations do not appear to produce a structurally different product from the Cadenhead product. The presence of process limitations on product claims in which the product does not otherwise

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patentably distinguish over the prior art, cannot impart patentability to the product. *In re Stephens*, 145 USPQ 656. Therefore, claims 7-10 and 14 are also rejected.

Conclusion

6. The art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

8. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached

at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Cheryl Juska/
Primary Examiner
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